IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2003

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Civil Revision Petition No.3555 of 1998

Mathuram .. Petitioner

-Vs-

Alagu .. Respondent

Petition filed under Section 115 of the Code of Civil Procedure, for the relief as stated therein.

!For petitioner : Mr.A.Sivaji

^For respondent : No appearance

:O R D E R

This civil revision petition is directed against the order dated 19 .03.1998 made in I.A.No.141 of 1998 in O.S.No.319 of 1991 by the Court of Principal District Munsif, Sivaganga.

2. Today, when the above civil revision petition was taken up for consideration, the learned counsel appearing on behalf of the petitioner was alone present and neither the respondent, nor his counsel appeared before this Court, in spite of his name having been brought in the list as a result of which, this Court is left with no option but to hear the learned counsel for the petitioner and pass orders, based on the materials made available on record and upon hearing the learned counsel for the petitioner.

3. The short point that falls for consideration and decision in the above civil revision petition is that the lower court has passed an order in I.A.No.141 of 1998, as per its order dated 19.03.1998, thereby permitting the respondent/defendant to pay the registration charges on an unregistered instrument, which is in the nature of a sale deed, thus making it known that in the event of complying with the said condition of payment of duty, the said instrument would be allowed to be marked as a document in evidence. Aggrieved, the petitioner/ plaintiff has come forward to file the above revision seeking to set aide the order passed by the trial court, the Court of Principal District Munsif, Sivaganga, on certain grounds that by virtue of the order passed by the lower court, an unenforceable instrument, when the stamp duty, etc. is paid, becomes liable to be marked, whereas, in

law, particularly as per the Registration Act, the document in question cannot be registered beyond 120 days from the alleged date of execution and hence the order of the lower court is against the very provisions of the Registration Act; that having found that the document in question is an unregistered instrument, the court below has erred in allowing the said interlocutory application, which it should have rightly rejected.

4. The learned counsel appearing on behalf of the petitioner would cite a judgment delivered in Lakshmipathy v. Chakrapani Reddiar reported in {(2001) 1 MLJ 1}, wherein a Division Bench of this Court has held in para.23, pertaining to the subject, in the following manner:-

"It is now fairly well settled that the co-owners can partition the immovable properties orally. But, however where a document is employed to effectuate a partition or any of the transactions specified in Section 17 of the Registration Act such document must be registered, notwithstanding that the transaction is one which the law does not require to be put into writing. Such unregistered document cannot be looked into to prove the terms of the partition. But, however the same is inadmissible in evidence for the purpose of creating, declaring, assigning, limiting or extinguishing a right to immovable property. The expression "collateral purposes" is no doubt a very vague one and the court must decide in each case whether the parties who seek to use the unregistered document for a purpose which is really a collateral one or as is to establish the title to the immovable property conveyed by the document. But by the simple devise of calling it " collateral purpose", a party cannot use the unregistered document in any legal proceeding to bring about indirectly the effect which it would have had, if it is registered."

5. According to the learned counsel for the petitioner, not only this judgment, but also in many judicial decisions, the upper forums of law have held that even under the pretext that the unregistered document is used for collateral purposes, it cannot be marked in evidence, and therefore, learned counsel is firm regarding the unenforceable nature of the document and would pray to set aside the order of the lower court.

6. This Court is in perfect agreement with the proposition laid down by the learned Division Bench that by the simple devise of calling it as collateral purpose, the party cannot be permitted to use the unregistered instrument, particularly when it is a sale deed, which should have been registered within the parameters of law, and therefore it cannot be permitted to be used in any legal proceeding to bring about indirectly the effect which it would have had, if it had been registered.

7. For the above reasons assigned, this Court is inclined to hold that the order passed by the Court of Principal District Munsif, Sivaganga, is not the one falling in line within the expectations of law in the particular circumstances of the case and in all respects, the said order becomes liable only to be set aside.

In result, the above civil revision petition succeeds and the

same is allowed.

The order dated 19.03.1998 made in I.A.No.141 of 1998 in O.S.No.319 of 1991 by the Court of Principal District Munsif, Sivaganga, is set aside. I.A.No.141 of 1998 in O.S.No.319 of 1991 is dismissed.

Consequently, C.M.P.No.17821 of 1998 is also dismissed.

However, in the circumstances of the case, there shall be no order as to costs.

gs.

Index:Yes.
Internet:Yes.

To
The Principal District Munsif, Sivaganga.